



[7590-01-P]

## NUCLEAR REGULATORY COMMISSION

[Docket No. 52-037; NRC-2008-0556]

### **Ameren Missouri; Combined License Application for Callaway Plant, Unit 2, Exemption**

#### 1.0 BACKGROUND

Union Electric Company, doing business as Ameren UE, submitted to the U.S. Nuclear Regulatory Commission (NRC) a Combined License (COL) Application for a single unit of AREVA NP's U.S. EPR in accordance with the requirements in part 52, of Title 10 of the *Code of Federal Regulations* (10 CFR), subpart C, "Licenses, Certifications, and Approvals for Nuclear Power Plants." This reactor is to be identified as Callaway Plant (Callaway), Unit 2, and located at the current Callaway County, Missouri, site of the Callaway Power Plant. The Callaway, Unit 2, COL application is based upon and linked to the U.S. EPR reference COL (RCOL) application for UniStar's Calvert Cliffs Nuclear Power Plant, Unit 3 (CCNPP3). The NRC docketed the Callaway, Unit 2, COL application on December 12, 2008. On February 25, 2009, Ameren submitted Revision 1 to the COL application, including updates to the Final Safety Analysis Report (FSAR). In its letter to the NRC dated April 28, 2009, Ameren informed the NRC that it was suspending its efforts to build a nuclear power plant in Missouri. Subsequently, by letter dated June 23, 2009, Ameren requested the NRC to suspend all review activities relating to the Callaway, Unit 2, COL application. The NRC informed Ameren by letter dated June 29, 2009, that it had suspended all review activities relating to the Callaway, Unit 2, COL application (Agencywide Documents Access and Management System (ADAMS) Accession No.

ML091750665). By letter to the NRC dated October 26, 2010, Ameren requested a one-time exemption from the 10 CFR 50.71(e)(3)(iii) requirements to submit the COL application FSAR update, and proposed for approval of a new submittal deadline of December 31, 2012, for the next FSAR update. The NRC granted the exemption as described in the *Federal Register* notice published on January 21, 2011 (76 FR 3927). Prior to expiration of the exemption, while the COL application remained suspended, Ameren, on October 15, 2012, requested a second one-time exemption from the 10 CFR 50.71(e)(3)(iii) requirements to submit the COL application FSAR update, and proposed for approval of a new submittal deadline of December 31, 2014, for the next FSAR update. The NRC granted the exemption as described in the *Federal Register* notice published on December 28, 2012 (77 FR 76539). The NRC is currently performing a detailed review of the CCNPP3 RCOL application, as well as AREVA NP's application for design certification of the U.S. EPR. On October 3, 2013 (ADAMS Accession No. ML13282A311), Ameren requested an exemption from the requirements of 10 CFR part 50, appendix E, section I.5, as referenced by 10 CFR 52.79(a)(21), to submit an update by December 31, 2013, to the COL application, addressing the enhancements to Emergency Preparedness (EP) rules.

## 2.0 REQUEST/ACTION

In part 50, appendix E, section I.5 requires that an applicant for a COL under subpart C of 10 CFR part 52 whose application was docketed prior to December 23, 2011, must revise their COL application to comply with the EP rules published in the *Federal Register* on November 23, 2011 (76 FR 72560). An applicant that does not receive a COL before December 31, 2013, shall revise its COL application to comply with these changes no later than December 31, 2013.

Since Ameren will not hold a COL prior to December 31, 2013, it is therefore, required to revise its application to be compliant with the new EP rules by December 31, 2013. By letter dated June 23, 2009, Ameren requested the NRC to suspend all review activities relating to the Callaway, Unit 2, COL application. The NRC informed Ameren by letter dated June 29, 2009, that it had suspended all review activities relating to the Callaway, Unit 2, COL application (ADAMS Accession No. ML091750665). In a letter dated, October 3, 2013 (ADAMS Accession No. ML13282A311), Ameren requested an exemption from the requirements of 10 CFR part 50, appendix E, section I.5 until a request for reactivation of the Callaway, Unit 2, COL application review is made by Ameren. Prior to this reactivation request, Ameren commits to submit a revision to the Callaway, Unit 2, Emergency Plan, to comply with the enhancements to EP Regulations.

Ameren's requested exemption is interpreted as a one-time schedule change from the requirements of 10 CFR part 50, appendix E, section I.5. In its request, Ameren asked the NRC to grant the exemption from 10 CFR part 50, appendix E, section I.5 until requesting the NRC to resume the Callaway, Unit 2, COL application review. Such a request is seen as open-ended, and therefore, not temporary, and also contradicts with Ameren's current FSAR update due date of December 31, 2014, which includes an update of the Emergency Plan as part of the FSAR. Based on the above reasoning, and to be consistent with the FSAR update due date, the NRC included an imposed December 31, 2014, deadline as part of its review of the exemption request. The exemption would allow Ameren to comply with the new EP rules at a later date, but still in advance of NRC's reinstating its review of the application and in any event, by December 31, 2014. The current requirement to comply with the new EP rules by December 31, 2013, could not be changed, absent the exemption.

### 3.0 DISCUSSION

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50, including 10 CFR part 50, appendix E, section I.5, when: 1) the exemption(s) are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and 2) special circumstances are present. As relevant to the requested exemption, special circumstances exist if: “[a]pplication of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule” (10 CFR 50.12(a)(2)(ii)).

The purpose of 10 CFR part 50, appendix E, section I.5 was to ensure that applicants and new COL holders updated their COL application or Combined License to allow the NRC to review them efficiently and effectively, and to bring the applicants or licensees into compliance prior to their potential approval and receipt of license, or operate the facility. The targets of section I.5 of the rule were those applications that were in the process of being actively reviewed by the NRC staff when the rule came into effect on November 23, 2011. Since Ameren requested the NRC to suspend its review of the Callaway, Unit 2, COL application, compelling Ameren to revise its COL application in order to meet the December 31, 2013, compliance deadline would only bring on unnecessary burden and hardship for the applicant to meet the compliance date. As long as it is recognized that the COL application must be updated to comply with the enhancements to the EP rules prior to the NRC approving their COL application, it makes no difference if Ameren revises the COL application now, when Ameren requests the review be restarted, or by December 31, 2014. For this reason, the application of 10 CFR

part 50, appendix E, section I.5, for the suspended Callaway, Unit 2, COL application is deemed unnecessary, and therefore, special circumstances are present.

#### Authorized by Law

The exemption is a one-time schedule exemption from the requirements of 10 CFR part 50, appendix E, section I.5. The exemption would allow Ameren to revise its COL application, and comply with the new EP rules on or before December 31, 2014, in lieu of December 31, 2013, the date required by 10 CFR part 50, appendix E, section I.5. As stated above, 10 CFR 50.12 allows the NRC to grant exemptions from the requirements of 10 CFR part 50. The NRC staff has determined that granting Ameren the requested one-time exemption from the requirements of 10 CFR part 50, appendix E, section I.5 will provide only temporary relief from this regulation under the above cited special circumstances, and will not result in a violation of the Atomic Energy Act of 1954, as amended, or NRC's regulations. Therefore, the exemption is authorized by law.

#### No Undue Risk to Public Health and Safety

The underlying purposes of the enhancements to EP found in 10 CFR part 50, appendix E, is to amend certain EP requirements which are aimed at enhancing protective measures in the event of a radiological emergency; address, in part, enhancements identified after the terrorist events of September 11, 2001; clarify regulations to effect consistent Emergency Plan implementation among licensees; and modify certain requirements to be more effective and efficient. Since plant construction cannot proceed until the NRC review of the application is completed, a mandatory hearing is completed, and a license is issued, the exemption does not increase the probability of postulated accidents.

Additionally, based on the nature of the requested exemption as described above, no new accident precursors are created by the exemption; thus, neither the probability, nor the consequences of postulated accidents are increased. Therefore, there is no undue risk to public health and safety.

#### Consistent with Common Defense and Security

The requested exemption would allow Ameren to submit the revised COL application prior to requesting the NRC to resume the review, and in any event, on or before December 31, 2014. This schedule change has no relation to security issues. Therefore, the common defense and security is not impacted.

#### Special Circumstances

Special circumstances, in accordance with 10 CFR 50.12(a)(2)(ii) are present whenever “[a]pplication of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule” (10 CFR 50.12(a)(2)(ii)). The underlying purpose of 10 CFR part 50, appendix E, section I.5 is to ensure that applicants are in compliance with the new EP rules in a time that allows the NRC to effectively review their revised COL application prior to issuance of the license. Since the Callaway, Unit 2, COL application review is now suspended, the application of this regulation in this particular circumstance is unnecessary in order to achieve its underlying purpose. If the NRC were to grant this exemption and Ameren were then required to comply by December 31, 2014, or prior to any request to restart of their review, the purpose of the rule would still be achieved. Therefore, the special circumstances required by 10 CFR 50.12(a)(2)(ii) for the granting of an exemption from 10 CFR part 50, appendix E, section I.5 exist.

Eligibility for Categorical Exclusion from Environmental Review:

With respect to the exemption's impact on the quality of the human environment, the NRC has determined that this specific exemption request is eligible for categorical exclusion as identified in 10 CFR 51.22(c)(25) and justified by the NRC staff as follows:

(c) The following categories of actions are categorical exclusions:

(25) Granting of an exemption from the requirements of any regulation of this chapter, provided that—

(i) There is no significant hazards consideration;

The criteria for determining whether there is no significant hazards consideration are found in 10 CFR 50.92. The proposed action involves only a schedule change regarding the submission of an update to the application for which the licensing review has been suspended. Therefore, there is no significant hazards consideration because granting the proposed exemption would not:

- (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or
- (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or
- (3) Involve a significant reduction in a margin of safety.

(ii) There is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite;

The proposed action involves only a schedule change which is administrative in nature, and does not involve any changes to be made in the types or significant increase in the amounts of effluents that may be released offsite.

(iii) There is no significant increase in individual or cumulative public or occupational radiation exposure;

Since the proposed action involves only a schedule change which is administrative in nature, it does not contribute to any significant increase in occupational or public radiation exposure.

(iv) There is no significant construction impact;

The proposed action involves only a schedule change which is administrative in nature; the application review is suspended until further notice, and there is no consideration of any construction at this time, and therefore, the proposed action does not involve any construction impact.

(v) There is no significant increase in the potential for or consequences from radiological accidents; and

The proposed action involves only a schedule change which is administrative in nature, and does not impact the probability or consequences of accidents.

(vi) The requirements from which an exemption is sought involve:

(B) Reporting requirements;

The exemption request involves submitting an updated COL application by Ameren,  
  
and

(G) Scheduling requirements;



The proposed exemption relates to the schedule for submitting COL application update to the NRC.

#### 4.0 CONCLUSION

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission hereby grants Ameren a one-time exemption from the requirements of 10 CFR part 50, appendix E, section I.5 pertaining to the Callaway, Unit 2, COL application to allow submittal of the revised COL application that complies with the new EP rules prior to any request to the NRC to resume the review, and in any event, no later than December 31, 2014.

Pursuant to 10 CFR 51.22, the Commission has determined that the exemption request meets the applicable categorical exclusion criteria set forth in 10 CFR 51.22(c)(25), and the granting of this exemption will not have a significant effect on the quality of the human environment.

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 20th day of November 2013

FOR THE NUCLEAR REGULATORY COMMISSION

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